

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ROBERT C. DENHAM JR.,

4 Plaintiff

Case No. 2:18-cv-00163-JCM-VCF

SCREENING ORDER

5 v.

6 JAMES DZURENDA et al.,

7 Defendants
8

9 Plaintiff, a former Nevada Department of Corrections (“NDOC”) inmate, has
10 submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application
11 to proceed *in forma pauperis* for non-prisoners. (ECF Nos. 1-1, 5). Plaintiff resides in
12 Missouri. (See ECF No. 1-1 at 1). The court now screens plaintiff’s civil rights complaint
13 pursuant to 28 U.S.C. § 1915.

14 **I. SCREENING STANDARD**

15 “[T]he court shall dismiss the case at any time if the court determines that . . . the
16 action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may
17 be granted; or (iii) seeks monetary relief against a defendant who is immune from such
18 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed *in forma*
19 *pauperis*, whether or not the plaintiff is incarcerated. See *Lopez v. Smith*, 203 F.3d 1122,
20 1129 (9th Cir. 2000); see also *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

21 Dismissal of a complaint for failure to state a claim upon which relief may be
22 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
23 1915(e)(2)(B)(ii) tracks that language. Thus, when reviewing the adequacy of a complaint
24 under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applies the same standard as is applied
25 under Rule 12(b)(6). See *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The
26 standard for determining whether a plaintiff has failed to state a claim upon which relief
27 can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil
28 Procedure 12(b)(6) standard for failure to state a claim.”). Review under 12(b)(6) is

1 essentially a ruling on a question of law. See *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719,
2 723 (9th Cir. 2000).

3 In reviewing the complaint under this standard, the court must accept as true the
4 allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve
5 all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).
6 Allegations in *pro se* complaints are "held to less stringent standards than formal
7 pleadings drafted by lawyers." *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation
8 marks and citation omitted).

9 A complaint must contain more than a "formulaic recitation of the elements of a
10 cause of action," it must contain factual allegations sufficient to "raise a right to relief
11 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
12 "The pleading must contain something more . . . than . . . a statement of facts that merely
13 creates a suspicion [of] a legally cognizable right of action." *Id.* (quoting 5 C. Wright & A.
14 Miller, *Federal Practice & Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a
15 plaintiff should state "enough facts to state a claim to relief that is plausible on its face."
16 *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

17 "A *pro se* litigant must be given leave to amend his or her complaint, and some
18 notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint
19 could not be cured by amendment." *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
20 1995).

21 **II. SCREENING OF COMPLAINT**

22 In the complaint, plaintiff sues defendants NDOC employees James Dzurenda,
23 David Tristan, Dwayne Dell, Shelly Williams, and John Does for events that took place
24 after plaintiff's release from prison. (ECF No. 1-1 at 1, 3-4). Plaintiff alleges four counts
25 and seeks monetary damages "in excess of ten thousand dollars." (*Id.* at 16-17).

26 The complaint alleges the following: After release from prison, plaintiff attempted
27 to seal his criminal records pursuant to Nevada state law. (*Id.* at 7-8). Plaintiff's petition
28 to seal was heard in state court. (*Id.* at 8). The state court judge provided the parties

1 time to file supplemental briefs on the issue. (*Id.* at 8-9). Plaintiff contacted NDOC
2 employees at the offender management division in an attempt to acquire parole discharge
3 and sentence expiration documents. (*Id.* at 9). In correspondence with Williams, plaintiff
4 specifically told her that he needed the NDOC to provide him with a written document
5 explaining his “total statutory credits deduction” as applied to his particular sentence
6 structure. (*Id.* at 10). Plaintiff also corresponded with Dell to get the documents
7 necessary to seal his criminal record. (*Id.* at 11). Plaintiff was unable to obtain a report
8 that contained a numeric analysis of plaintiff’s “flat-time, good-time, and meritorious
9 credits deduction from the maximum term imposed by the ‘judgment of conviction,’ for the
10 purpose of sealing his criminal record.” (*Id.* at 12).

11 Plaintiff sues defendants for: (1) negligence and the “rights guaranteed by the Fifth
12 and Fourteenth Amendments”; (2) breach of employment duty and the “rights guaranteed
13 by the Fifth and Fourteenth Amendments”; (3) intentional infliction of emotional distress
14 and violations of the Fifth, Eighth, Ninth, and Fourteenth Amendments; and (4) fraud. (*Id.*
15 at 7, 12-13, 15-16).

16 As an initial matter, the court will address subject-matter jurisdiction in this case.
17 The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28
18 U.S.C. §§ 1331 and 1332. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 (2006). Section
19 1331 provides for federal-question jurisdiction and § 1332 provides for diversity of
20 citizenship jurisdiction. *Id.* “A plaintiff properly invokes § 1331 jurisdiction when she
21 pleads a colorable claim ‘arising under’ the Constitution or laws of the United States.” *Id.*
22 “She invokes § 1332 jurisdiction when she presents a claim between parties of diverse
23 citizenship that exceeds the required jurisdictional amount, currently \$75,000.” *Id.*
24 “[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must
25 dismiss the complaint in its entirety.” *Id.* at 514. The court now addresses both federal-
26 question and diversity jurisdiction in this case.

27 **A. Federal-question Jurisdiction**

28 Federal district courts have “original jurisdiction of all civil actions arising under the

1 Constitution, laws, or treaties of the United States.” 28 U.S.C.A. § 1331. “The presence
2 or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint
3 rule,’ which provides that federal jurisdiction exists only when a federal question is
4 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v.*
5 *Williams*, 482 U.S. 386, 392 (1987).

6 The court finds that there is no federal-question jurisdiction in this case. Although
7 plaintiff lists the Fifth, Eighth, Ninth, and Fourteenth Amendments in his complaint, plaintiff
8 does not allege any facts that would support violations of any of those amendments. (See
9 ECF No. 1-1 at 12, 15-16). As such, this action lacks federal-question subject-matter
10 jurisdiction.

11 **B. Diversity Jurisdiction**

12 Federal district courts have “original jurisdiction of all civil actions where the matter
13 in controversy exceeds the sum or value of \$75,000” and is between citizens of different
14 states. 28 U.S.C. § 1332(a)(1). When a plaintiff brings a case to federal court, it must
15 “appear to a legal certainty” that the plaintiff’s claim is really for less than the jurisdictional
16 amount to justify dismissal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing
17 *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

18 The court finds that there is no diversity jurisdiction in this case. Even if plaintiff
19 and defendants are citizens of different states, plaintiff has not satisfied the \$75,000
20 amount-in-controversy requirement. Plaintiff’s complaint only states that this case is
21 worth “in excess” of \$10,000 which is insufficient to satisfy the amount in controversy.
22 Moreover, the court finds that, to a legal certainty, plaintiff’s claims for being unable to
23 obtain specific documents from the NDOC will not satisfy the \$75,000 amount-in-
24 controversy requirement. As such, the court dismisses this case, without prejudice, for
25 lack of subject-matter jurisdiction. If plaintiff wishes to pursue his state law claims for
26 negligence, breach of employment duty, intentional infliction of emotional distress, and
27 fraud, he should file a complaint in state court.

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